

**Milton Board of Adjustment Meeting
Milton Library
121 Union Street
Milton, DE
Tuesday, July 28, 2009
7:00 PM**

1. Call meeting to order.
2. Roll call of members present:

Margo Goodman	Janet Turner
Alex Donnan	James Crellin

A. Donnan – Ok; we have quorum. We will swear you in Janet. So we can be finished.
3. Reading the oath of office and swearing in of new member: Janet Turner

A. Donnan – Robert Carbone; our 5th member is not present.
4. Additions or Corrections to the Agenda

A. Donnan – Ok, do we have additions or corrections to the agenda? (Silence)
None?
5. Approval of the Agenda.

A. Donnan – Ok; we'll go with the agenda as submitted.
6. Approval of the minutes – October 14, 2008

A. Donnan – Minutes of October 14, 2008; which was the last meeting; any changes on that?
J. Crellin – I have one change on item #8; the 3rd to the last comment; I believe that can be attributed to me and not Robert. Robin reprimanded me. I don't want that to reflect on Mr. Carbone.
A. Donnan – I'm sorry where exactly was that?
J. Crellin – Item #8; the 3rd last comment. In the piece of paper we got with these drawings.
A. Donnan – Ok; got it; Robert Carbone; that should be you?
J. Crellin – Yes; dually reprimanded by Robin.
A. Donnan – Any other changes? (Silence)
J. Crellin - I move the minutes be accepted as amended.
A. Donnan – 2nd?
M. Goodman – Second the motion.
A. Donnan – All in favor? (Response -Aye) Against? (None) Ok; passed. With the approval of that; we will move to the public hearing.
7. Public Hearing

A. Donnan – We have a variance application from Shipbuilders LLC.

The applicant, Shipbuilders LLC, is requesting approval for the following variances at 803 South Spinnaker Lane further identified by Sussex County Tax Map and Parcel # 2-35-14.00-367.00. The property is zoned R-3 (Residential).

1. Reduction to minimum side yard setback from 25' to 10'.
2. Reduction to minimum rear yard setback from 25' to 15'.

A. Donnan – Is there someone here to speak for this? Identify yourself please and step up to the microphone.

Bob Burns – Mr. Chairman and members of the board, my name is Bob Burns. I am representing Shipbuilders LLC. The application as requested is basically what we have stated in the addendum which was submitted. Rather than go over everything that you have in front of you; I will indicate that the error had occurred on this lot; several years ago; I believe. The structures that are built next to this lot; the townhouse structures; were built in such a way that; evidently they were built off the property lines; which staggered it. In order to correct that situation; rather than tear down the buildings; because it was my understanding that they were under roof. They moved the property lines; basically; via paper. To align with the party walls; if you will; and legalize everything along those lines. In doing so; we lost; I think somewhere around 25' or so; from lots what were 200 and 201. Now we are down to the single lot which we propose to put a single family house on there. We do not think that it would be detrimental to the surrounding area as we propose basically the same standards that are required on the adjacent property; which is zoned R-1; the single families. We are asking for those standards. If the question comes up with respect to; why don't we build a town house or two town houses on there; we are left with the same situation. In that 25' side yard and 25' distance from the new structure will be required; this will leave us with 7' buildable and this will be the same situation as now. We would prefer to do the single family house.

A. Donnan – Questions? I have a couple. On the site plan you provided; what is directly north of the property line?

B. Burns – That is a single family house.

A. Donnan – Is that part of your set up?

B. Burns – No; this lot is completely separate. That is where the actual single family structures that currently exist; start.

A. Donnan – Ok. What is to the west?

B. Burns – Townhouses.

A. Donnan – No; to the west.

B. Burns – Oh; that's an open field. I'm going to call it a farm field.

R. Davis – That property is currently out of town. The line that you see right there is the town limit. From Shipbuilders and to the Workman property.

A. Donnan – Oh; I see so beyond that is no-mans land.

R. Davis – It's in the Sussex County; A R-1 or whatever it is. Whatever they zoned it.

A. Donnan – What type of house is going to be put up there?

B. Burns – It will be a single family structure; you all know that.

A. Donnan – What is the frontage of the house going to be compared to the lot?

B. Burns – Well basically; I believe the lot is about 57' wide; if my memory serves me correctly; and with 10 and 10 it leaves you with 37. It will be 37 wide and fairly deep.

J. Crellin – It will look a little bit like a carriage house; won't it?

B. Burns – Yes.

J. Crellin – Single story or two stories?

B. Burns – I believe at this point they are proposing a single story; to be compatible with the adjacent neighborhood.

A. Donnan – Ok; any discussion on this portion? (Response – No) Anyone from the public who wishes to speak?

D.J. Hughes – 403 Mainsail Lane. I just want to make sure I am clear. Are these properties we are talking about; where the boulevard comes in all the way in the back of the development; are there two properties there?

R. Davis – They used to be two lots. I think in 2002 or somewhere around there they got consolidated into one lot.

D. J. Hughes – So that's why there is two addresses?

R. Davis – Yes; that's why the town still showed it as two addresses; 803 and 805.

D. J. Hughes – But; we're only talking about one house going here?

R. Davis – Yes; only one house. Because it is only one parcel now.

D. J. Hughes – Ok; and that has always been a buildable lot in there?

R. Davis – Yes; it was designed for that. The lot lines got moved; there was no way to build a house in there because of that.

D. J. Hughes – If this was just this we were talking about; with this development; I wouldn't necessary have a problem with this one set back variance that they are going for just to build a house. The problem I have is; I have been in there since June of 2004; we don't have a top coat yet; we have pot holes everywhere; I know the drainage issues has supposedly been worked out as part of the Planning & Zoning and I think Town Council process; with the seven lots up front. We received a letter from the Mayor; stating work would start the beginning of June. Here we are at the end of July and there has not been a shovel put in the ground yet. All things considered; I don't feel where they should receive any variance for anything. They already have the seven lots up front there. I just feel where they should get any more variance. If that drainage and the top coat is fixed; and they want to come back for variance; I wouldn't have a problem with that; and I wouldn't come back here to oppose it. This based solely on the fact; like I said; I have been there five years and we don't have a top coat yet; there are man holes this high; we have a lot of people in there trying to sell houses. Due to the economy; I'm sure is the main problem; but when you don't have a finished street; and people see a water pump there pumping out water every time it rains; which I believe the town ended up having to purchase; and that's the town's expense now. Considering those things; I request that you don't grant them a

variance at this time. Like I said; I wouldn't oppose it if they want to come back when all that is fixed; but at this time I am asking that you oppose it because of those reasons. That is all I have to say.

Allison Hughes – I also live at 403 Mainsail Lane. I want to second what my husband stated. But from a different perspective; I have an infant now and when it's raining for two days afterwards; you can't take a walk down our streets. I know the economy is bad; maybe that's why they need to sell more houses; but until stuff is fixed right the first time; I have to agree with what my husband said. They need to fix what they said they said they're going to fix. We got a letter dated May 19th; stating that this work was going to start in June; nothing has happened. They said after that a top coat would be put down on our street and I presume the other streets where the three story Gem Crafts are; none of that has been done. I would like to reiterate and also ask that this not be granted until they're held to the commitment that was made; and the letter the homeowners received. I know there is not a lot of homeowners here; from shipbuilders; but if you look at our community; it's a lot of young parents; and it's a lot of older people. It is dangerous especially for those two groups of people. So; thank you.

A. Donnan – Any other comments from the; against; from the public?

?? – I just wanted to know where it was located; where these new houses were going.

R. Davis - Mr. Donnan, I don't know if this is the right time or not; but I will speak to Mr. and Mrs. Hughes' concerns. Shipbuilders LLC has worked real hard trying to get the top coat and the drainage issue resolved. The hold up now is not from Shipbuilders LLC. It is from an issue that came up with the easement through the Holly Lake Trailer Park; or the "X" Holly Lake Trailer Park. There was an easement granted by Mr. Robino who acting on behalf of Mr. Turner; for the Holly Lake Trailer Park. A portion of the new road going into that development was going to be dedicated to the town. Unfortunately; when they did the site plan; they did the easement; that never got added to the easements. We found this out after Christiana Excavating was getting ready to start. We had the easements through the schools; everything was ready to go. They were going to start right after school ended. I understand that it's been five years and it's been massive problems in that development. But I just want to go on the record to say; that it's not Shipbuilders LLC that's holding up this drainage problem. They are ready to go. The plans were to go ahead and do the drainage and as soon as they got the drainage done; they were going to top coat; and get in and out. That was the plan. I took them for their word. I talked to Mike Conner; we had a pre-construction meeting. Ready to go. Bob Kerr was there; our engineer. We were all set. Then the attorney's said; "wait a minute; we have a problem with the easement". Now our attorney is working with Mr. Kerr's attorney to try and get this squared away. All the indications that I have seen; they are waiting because Mr. Burns had contacted me when we did this application; and asked if there was anything that they needed to do about the easement. It's nothing that they have to do. It is the town's issue trying to get the easements from Holly Lake and the school. We are trying to push forward and get that easement completed. Then they can move forward with the project. Unfortunately; the letter was sent out by

the Mayor. The school has no problem with us because it's all the way in the back. The school didn't have a concern; we could have started at the end. It was our concern. The town said, "Let's just wait until the 12th or whenever they got out of school. That way we know the kids are not there". They had soccer clubs back there too. I think Shipbuilders LLC; on this issue; has tried to work near the end. I understand that there has been problems in the past. I do understand that. This should have been taken care of a long time ago. I just want to let the Hughes' know that it's not Shipbuilders that's dragging their feet. The town is just trying to work through this process with ease. That's all.

J. Turner? – Do you have any sense how long it might take until this will be resolved.

R. Davis – It's the number one thing on the list. Unfortunately everybody knows we have issues with another public hearing going on in town. A lot of time has been dedicated to that. I did get an e-mail from our Town Solicitor that said she has made several contacts with Mr. Turner's attorney. I did have a meeting with her last week to go over exactly what the problem was. She inherited this problem just like we did because our previous town solicitor had looked at the easement and stated everything is ok. Now it's just came up here; so she had to be brought to speed on it. I was leery when the Mayor put the date in; I really didn't like that because things happen; and of course; things did happen.

D. J. Hughes – I don't have anything against Mr. Burns or necessarily what they're trying to do; it sounds like they probably couldn't fit a single family without the variance. But the problem is; once you grant them that; it's done and not that is going to be incentive for this deal to get worked out quicker; but I don't know whose problem this whole drainage problem was in the beginning.

Everybody basically did this and pointed fingers. I think the town; Shipbuilders; Gem Craft; Christiana Excavating; I think they all had a little bit of a part in it. Somebody didn't do something right at some point and I'm not going to sit here and say who that was tonight; and I don't think that really matters. First it was the seven lots on what was an recreational area; they got that; then they promised to fix the drainage; and that's fine it this other hang up has nothing to do with Shipbuilders LLC then I guess; in my opinion that's unfortunate. Still to give them another variance after sub-dividing seven lots; this will be eight lots that the town is working with them. Meanwhile; maybe some things were done on paper; we got a letter but nothing physical has still been done. Maybe my timing of the request for the variance is the main problem with it; but I just have problems with giving them something else; in my opinion; at this time when nothing has been done to help the residents. Nothing physically has been done.

Allison Hughes – Where that lot is; is on the street where a lot of those drainage problems are and there are times when you can't drive down the street where that very lot is. So; it's kind of a catch 22. Sure; put your lot there; people's houses there or parts of them are submerged under water. Where that lot is; isn't the worst part; but you're still going to have people who are going to have to drive through that mess to try and go anywhere. It's kind of putting the cart before the horse; in my opinion.

D. J. Hughes – I agree with her; and it actually benefits them; I can't see them being able to sell that house actually; without the top coat and drainage fixed there. If you go and look at that lot; when you look to the left; you're going to see the big water pump sitting there. I think it would be in their best interest; as far as selling that lot; to get those problems done too. I think for us; it just the timing of the request of this variance that if construction was undergoing right now; we probably wouldn't be here tonight. Admittedly; we thought this was a variance for the lots up front that they just granted the sub-division for. We still request that you don't grant it based on the drainage and other issues that we've had. Thank you.

A. Donnan – Any other comments from the public? (No response) I have just a couple of comments. This request is basically an R-3 residential area and basically looking for an R-1; which is a single family home set backs. The lot is 55,301 square feet. A normal single family home is 10,000 square feet. But since it is zoned R-3 4,000 is the minimum for it; and it does pass that. The set backs; do in fact meet R-1 requirements. In my opinion; there are no negatives to the surrounding properties; in terms of putting a single family house where there is mostly townhomes. It is slightly lower density than is allowed there. There is a higher density allowed. Those factors; in my opinion; don't warrant a negative connotation in terms of a problem. That's the only comment I have; really. One other point; the board here; is a quasar judicial board. We'll close the public hearing; the public segment of the comments and continue with our discussion.

8. Business

A. Donnan - This is a quasar judicial board and typically you can only look at what's in front of you. We can't take in factors that are not here. I understand your situation; I'm aware of it in advance. We know of the problems in Shipbuilders. But it's not here; it's not a part of our position tonight. All we are looking at is an R-1; R-3 situation where we are trying to change set back lines. We really don't take into account all the other issues with this place. It's not part of our agenda; it's not part of the discussion we have here. That is unfortunate; but really that's the situation we have. We can only look at; and comment; and work with what is here and present it on paper. That's your comments and what not; there worth speaking about and certainly aware of it; but it really is not something we can move on. Ok; that's the way I read it. Janet?

J. Turner – Listening to this; and I understand the background from living here a number of years; I can appreciate the problems that exist. My question is kind of in the middle here; there is no real problem with the location of a single family; and leave the quest go forward of the rezoning. But the problem is even a sequential one; you're not going to repair the roads first and have to dig up again to do a new building. Can we in some way structure our response to say; yes the zoning is approved; but cannot be implemented until these other things are set in motion; such as the repaving? In other words there would be no building constructed until the drainage problem was corrected? That's a question I don't know.

A. Donnan – I believe we could. If there is drainage issues right where this property is; then I think it's a factor.

J. Crellin – I am opposed to; in a sense; holding the builder/developer; who ever they are; hostage with respect to the drainage problems and resurfacing of the streets. In pure pragmatic terms; if the lot is not saleable; no body is going to buy it anyway. It won't probably be sold until those improvements are made.

A. Donnan – Any other comments?

M. Goodman – Mr. Burns; are there any other lots within the Shipbuilders that were effected by the inaccuracy back in 2002?

B. Burns – I do not believe so. I do not believe there are any other lots. We intended to use the funds from this; as well as the funds from the other seven lots; to fund the actual improvements; is our goal. We have told the town; as Robin has indicated; that we are ready to go. We sent Christiana Excavating down. I asked the question; how long will it take to fix the drainage problems; since that's the most severe? I was told probably about 30 days; good weather providing. If they tell us tomorrow; we will start tomorrow.

A. Donnan – Any other comments? Would you like to make a motion to approve with conditions?

J. Crellin – What would those conditions be?

J. Turner – Well; the condition I had raised. I'm no sure; I appreciate your response to that. I don't know that there any real need to put a condition on this whole building; because the lot would probably not be ready to sell until such times those corrections are made.

M. Goodman – Upon reviewing and hearing the further information of what is going to occur; I feel I should approve this as submitted.

A. Donnan – Let's make a motion then.

R. Davis – Margo; in your motion would you please state what you're approving not just as submitted. That you will make a motion to approve it with reduction in as stated within.

M. Goodman – I make a motion to approve the applicant; Shipbuilders LLC; requesting the approval for the following variances at 803 South Spinnaker Lane further identified by Sussex County tax map and parcel # 2-35-14.00-367.00.

1. Approve reduction to minimum side yard setback from 25' to 10'.
2. Approve reduction to minimum rear yard setback from 25' to 15'.

A. Donnan – Do we have a second?

J. Crellin – I second.

R. David – I just want to make sure that we are going to go through this; Margo Goodman has made a motion to approve the application for Shipbuilders LLC for the following variances at 803 South Spinnaker Lane. She is requesting the motion to approve; reduction to minimum side yard setback from 25' to 10'; and the reduction to minimum rear yard setback from 25' to 15'. It has been second by Jim Crellin.

A. Donnan – Any discussion? I have a comment. I'm still in favor of approving it, but making sure that any drainage issues in front of that lot are corrected on the approval process.

R. Davis – The drainage for the whole development is going to be approved by the overall....

A. Donnan – Yes; but I can only deal with this lot right now.

R. Davis – Yes.

A. Donnan – I'm saying that in terms of in front of this lot; there is a drainage issue there and it should be resolved with the terms of this approval.

M. Goodman – I don't believe that the drainage issue is that lot. It's the entire development.

B. Burns – Granted.

A. Donnan – Any further discussion?

J. Crellin – Just to further my comment; the lot isn't going to be saleable until the drainage is fixed. In my view it's moot. We change the restrictions; that's fine; but they can't do anything with it until they fix the drainage.

A. Donnan – Ok; we'll take a voice vote; please?

R. Davis – And if you would; the Town Solicitor has requested that you state a reason why you are voting the way you are. Whether yes because of this; or no because of that. Not just a yes or no answers; please.

J. Crellin – I vote yes because I think this change in requirements is compatible with the adjacent property and will not be a detriment to the rest of the community.

M. Goodman – Vote yes. The lot is situated right next to a single family house as well as a town house; it fits into the variance being submitted; to be very well suited. It is an improvement to the development rather than a vacant unimproved lot.

A. Donnan – I'm voting against it on the basis; #1 the set back is fine; I don't have a problem with the setback. I have no problem with the location. I think it fits into the area well. However; I believe that there apparently is a drainage issue in front of this lot. I think that approval of the variance should be coupled with that the drainage issue should be resolved with that lot. I understand that the drainage issue maybe much larger than that; but I'm speaking to this particular lot now; so I vote no.

J. Ternier – I am going to vote yes; because I see that the rezoning will be in conformity with the surrounding buildings and would be an addition to the general community by upgrading a vacant lot to an improved building site. I do have concerns about the progression in which these things take place. I do have to vote yes; or no. I am voting yes; but I would hope that nothing could be built until this drainage problem; it would seem almost impossible to build and sell the property until the drainage problem is solved. That certainly would be what I would see as the outcome of this change in zoning.

A. Donnan – Alright; this request is passed.

R. Davis – I just want to clarify; Ms. Ternier; you were talking about a re-zone. This is not a re-zone.

J. Ternier – Not a re-zone; I mean a reduction in the set back.

A. Donnan – The aye’s have it. The request is passed.
M. Goodman – Motion to adjourn the meeting.
J. Crellin – Second.
A. Donnan – All in favor? (Aye)

9. Adjournment 7:33:07 PM